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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DEANZA BLACK, et al.,

Plaintiffs,

v.

OFFICER RYAN MCBRIDE, et al.,

Defendants.

Case No. 2:06-CV-01394-KJD-GWF

ORDER

Presently before the Court is Defendants' Motion for Summary Judgment (#19). Plaintiff filed an Opposition and Counter Motion to Withdraw as Counsel for Plaintiffs Smith and Sesson (#24), to which Defendants filed a Reply (#27). Defendants also filed a Notice of Non-Opposition (#28) to the motion to withdraw. Accordingly, the Court grants the Motion to Withdraw as Counsel for Plaintiffs Smith and Sesson.

Also before the Court is Defendants' Motion in Limine to Exclude the Testimony of D.P. Van Blaricom (#35). Plaintiffs filed a response in opposition (#39/40) to which Defendants replied (#41). The Court denies the Motion in Limine as moot, because even crediting the testimony of Van Blaricom, the Court finds there has been no constitutional violation in this case and grants the motion for summary judgment.

1 **I. Facts**

2 This case arises from an incident on July 4, 2006, in Las Vegas, Nevada, at the intersection of
3 Flamingo Road and Las Vegas Boulevard (the “Strip”). Las Vegas Metropolitan Police Officers
4 Ryan McBride and Noel Lefebvre, were on duty as bike patrol on the Strip and conducting a “Safe
5 Strip” program. The police department was anticipating the large crowds that usually attend the
6 annual fireworks display for the 4th of July celebration in the area of the Strip. The officers were
7 dressed in the typical uniform for police officers operating bicycles.

8 They were traveling northbound along Las Vegas Boulevard towards Flamingo Road when
9 their attention was drawn to a Camaro stopped on Flamingo Road facing west and far enough across
10 the crosswalk to be impeding traffic in the right-hand travel lane for northbound traffic on Las Vegas
11 Boulevard. Loud music was also heard emanating from the vehicle. Officer Lefebvre positioned
12 himself and his bicycle on the driver’s side of the vehicle while Officer McBride positioned himself
13 to the back on the passenger side in a backup position. Officer Lefebvre told the driver to turn off the
14 vehicle and received no positive reaction. According to Officer Lefebvre, the driver threw his hands
15 up in the air, looked angry, and at one point looked over his right shoulder.

16 At this point Officer Lefebvre recalls taking off his helmet, approaching the car, and in a loud
17 voice instructing the driver to turn off the vehicle. Receiving no response and concerned that the
18 driver might not speak English or understand, the officer remembers putting his right arm in the
19 window of the car approximately a hand length and making a turning symbol with his hand to show
20 the driver he should turn off the ignition. Officer McBride recalled that after Officer Lefebvre put
21 his hand in the window, the driver looked over his right shoulder as though he were going to run and
22 then the car took off with the tires screeching and smoking.

23 A cab driver, James Yagle, whose vehicle was blocked by the Camaro, testified he saw
24 Officer Lefebvre leaning on the window of the Camaro when it suddenly started going forward. At
25 that point, according to Yagle, Officer Lefebvre went in the window further, leaving the bicycle to
26 collapse behind him. The passengers in Yagle’s cab also testified similarly to the fact that the officer

1 was straddling his bike, leaning on the car, and went into the window further only after the car took
2 off suddenly.¹

3 The Camaro, with Officer Lefebvre hanging from the driver's side window, turned right on
4 Las Vegas Boulevard and hit a light pole, coming to a sudden stop. At this point the air bag
5 deployed in response to the collision and Officer Lefebvre was rendered unconscious. Officer
6 McBride, from his vantage point saw the airbag deploy. He gave the command for the driver to stop
7 and get out. Instead he observed the driver put the car into reverse and look over his shoulder again.
8 According to Officer McBride, he believed that the driver was either going to slam Officer Lefebvre
9 against the taxi into which he was backing, or another vehicle, or run over him. At this point Officer
10 McBride fired a single shot at the driver, later identified as Tarance De Shon Hall, hitting his mark.
11 Officer Lefebvre then regained consciousness and noticed that the Camaro had gone backwards into
12 the taxi and that the tires were smoking. Mr. Hall, was immediately pulled from his vehicle and
13 medical help called. He later died as a result of the gunshot wound.

14 Defendants seek summary judgment claiming that on undisputed facts, the actions of both
15 officers were absolutely appropriate and that no violation of Plaintiff's Constitutional rights
16 occurred, that Defendants' actions were reasonable under the circumstances, and that Defendants'
17 actions do not constitute excessive force.

18 **II. Standard for Summary Judgment**

19 Summary judgment may be granted if the pleadings, depositions, answers to interrogatories,
20 and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any
21 material fact and that the moving party is entitled to a judgment as a matter of law. See, Fed. R. Civ.
22 P. 56(c); see also, Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The moving party bears the
23 initial burden of showing the absence of a genuine issue of material fact. See, Celotex, 477 U.S. at
24 323.

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26 ¹The slight inconsistencies in the statements of the witness are not material for purposes of the
analysis which follows.

1 The burden then shifts to the nonmoving party to set forth specific facts demonstrating a
 2 genuine factual issue for trial. See, Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
 3 587 (1986); Fed. R. Civ. P. 56(e). “[U]ncorroborated and self-serving testimony,” without more, will
 4 not create a “genuine issue” of material fact precluding summary judgment. Villiarimo v. Aloha
 5 Island Air Inc., 281 F.3d 1054, 1061 (9th Cir. 2002). Summary judgment shall be entered “against a
 6 party who fails to make a showing sufficient to establish the existence of an element essential to that
 7 party’s case, and on which that party will bear the burden of proof at trial.” Celotex, 477 U.S. at 322.

8 **III. Analysis**

9 To succeed on a personal capacity claim against a government official, Plaintiff must prove
 10 that the official, acting personally under color of state law, deprived Plaintiff of a Constitutionally
 11 protected right. See Kentucky v. Graham, 473 U.S. 159, 166 (1985). Further, Plaintiff must pierce
 12 the official’s qualified immunity. See Anderson v. Creighton, 483 U.S. 637, 638 (1987). Qualified
 13 immunity protects government officials performing discretionary functions from civil liability under
 14 federal law unless their conduct violates a “clearly established [federal] statutory or constitutional
 15 right[] of which a reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818,
 16 (1982).

17 The inquiry for determining whether qualified immunity exists consists of two steps. First,
 18 the court determines whether “[t]aken in the light most favorable to the party asserting the injury, []
 19 the facts alleged show the officer’s conduct violated a constitutional right[.]” Scott v. Harris, 127
 20 S.Ct. 1769, 1774 (2007) (quoting Saucier v. Katz, 533 U.S. 194, 201 (2001)). If the answer is
 21 affirmative, the court then asks “whether the right was clearly established . . . in light of the specific
 22 context of the case.” Id.² Here, the Court finds that no Constitutional violation occurred, and thus
 23 that the Defendants are entitled to qualified immunity. However, even if the Court were to determine
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 26 ²The Court notes that while the Supreme Court recently held that this two-step analysis is no longer mandatory, it
 “continue[s] to recognize that the Saucier protocol is often beneficial.” Pearson v. Callahan, 129 S.Ct. 808, 811 (2009).

1 that a Constitutional violation had occurred, Plaintiff is unable to pierce the Defendants' qualified
2 immunity. As such, Defendants are entitled to summary judgment as a matter of law.

3 **A. Constitutional Violation**

4 **1. Unreasonable Search and Seizure**

5 The Fourth Amendment of the United States Constitution requires that an officer have
6 probable cause before searching or seizing a person or his property. See U.S. Const. amend. IV.
7 "Arresting officers have probable cause to make [a] warrantless arrest, if, at the time of arrest, facts
8 and circumstances within their knowledge and of which they have reasonably trustworthy
9 information are sufficient to warrant a prudent man in believing that the arrested person had
10 committed or was committing an offense." United States v. Hillison, 733 F.2d 692, 697 (9th Cir.
11 1984).

12 However, a police officer may seize a citizen for a brief investigatory stop if the
13 officer has a reasonable articulable suspicion of criminal activity. See Terry v. Ohio, 392 U.S. 1, 27
14 (1968). The reasonableness of the officer's suspicion must be tested against the backdrop of the
15 totality of the circumstances surrounding a challenged stop. See Alabama v. White, 496 U.S. 325,
16 330 (1995). It is well settled that "headlong flight—wherever it occurs—is the consummate act of
17 evasion," and though flight is not necessarily indicative of wrong doing, "it is certainly suggestive of
18 such." Illinois v. Wardlow, 528 U.S. 119, 124 (2000).

19 Here, considering the totality of the circumstances, the Court finds that Defendants
20 Lefebvre and McBride had reasonable suspicion to stop Plaintiff in furtherance of their investigation.
21 Specifically, the officers observed Hall's car to be blocking traffic in a congested intersection and
22 apparently exceeding noise limits. The events occurred on a major holiday when there was also
23 considerable traffic and pedestrian activity. Additionally, Hall's uncooperative response to Officer
24 Lefebvre's requests to shut off the music or vehicle provided him with reason to inquire further.
25 Thus, Officer Lefebvre had a reasonable, articulable grounds to proceed with his investigation.

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1 Additionally, Plaintiff's attempt to escape by suddenly accelerating his vehicle with
2 the officer hanging out the window and his repeated refusal to stop, provided Defendants with the
3 requisite probable cause to arrest him. After it became apparent that he was using his vehicle in a
4 manner which put the lives of others at risk, the officers had adequate reason to resort to deadly force
5 in order to prevent death or serious injury to themselves or others.

6 **2. Excessive Force**

7 The Fourth Amendment protects individuals against excessive use of force from
8 government officials. See U.S. Const. amend. IV. However, if an officer's use of force is
9 objectively reasonable under the circumstances, no constitutional violation occurred. See Graham v.
10 Connor, 490 U.S. 386, 397 (1989). The reasonableness of an arrest or seizure must be assessed by
11 "carefully considering the objective facts and circumstances that confronted the arresting officer or
12 officers." Chew v. Gates, 27 F.3d 1432, 1440 (9th Cir. 1994). The court must judge the
13 reasonableness from the perspective of a reasonable officer on the scene rather than with the 20/20
14 vision of hindsight. See Graham, 490 U.S. at 396.

15 To determine whether the force used to effect a particular seizure is "reasonable"
16 under the Fourth Amendment, the Court must balance the nature and quality of the intrusion of the
17 individual's rights against the countervailing governmental interests at stake. See id. First, the Court
18 must evaluate the type and amount of force inflicted in order to assess the gravity of the alleged
19 intrusion on an individual's rights. See Chew, 27 F.3d at 1440.

20 The second issue the Court must address is the governmental interest involved by
21 considering three factors: (1) the severity of the crime at issue; (2) whether the suspect poses an
22 immediate threat to the safety of the officers or others; and (3) whether the suspect is actively
23 resisting arrest or attempting to evade arrest by flight. Graham, 490 U.S. at 396. These factors must
24 be balanced against the amount of force used in effectuating arrest, yet are not to be considered in a
25 vacuum. See Chew, 27 F.3d at 1441. Further, excessive force claims are evaluated for objective
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1 reasonableness based upon the information the officers had when the conduct occurred. See Saucier,
2 533 U.S. at 207 (overruled on other grounds by Pearson, 129 S. Ct. at 815).

3 Here, the Court finds that Defendants did not use excessive force in stopping Hall as
4 he fled from the officers and commenced using his vehicle as a deadly weapon. Lefebvre's sticking
5 his arm or even part of his body into the car did not amount to a Constitutional violation.

6 Accordingly, the Court finds that Defendants did not violate Plaintiff's Fourth
7 Amendment rights to be free from unreasonable search and seizure and to be protected from the use
8 of excessive force. Therefore, Defendants are entitled to Summary Judgment as a matter of law.

9 **B. Violation of Clearly Established Law**

10 As stated above, in order to succeed on a personal capacity claim against a government
11 official, Plaintiff must pierce the official's qualified immunity. See Anderson, 483 U.S. at 638.
12 Here, even if a Constitutional violation occurred, Plaintiff cannot pierce Defendants' qualified
13 immunity, because under the factual scenario presented the violation was not clearly established.
14 Thus, Defendants are entitled to Summary Judgment as a matter of law.

15 As stated above, qualified immunity shields a § 1983 defendant from civil liability for alleged
16 harms arising from discretionary actions so long as the actions do not violate clearly established law
17 of which a reasonable person would have known. See Harlow v. Fitzgerald, 457 U.S. 800, 818
18 (1982). For an asserted right to be well established for immunity purposes, the unlawfulness of the
19 officer's action must be apparent. See Anderson, 483 U.S. at 640. In other words, an officer has
20 immunity if he could have reasonably believed his conduct was appropriate in light of well-settled
21 law. See Saucier, 533 U.S. at 204.

22 Here, Defendants could have reasonably believed their conduct was appropriate in light of
23 well-settled law. Specifically, the Officers had reasonable suspicion for an investigatory stop based
24 on Hall's car blocking the intersection and the loud music. Furthermore, Defendants have identified
25 no well-settled law demonstrating that Officer Lefebvre's actions violated Defendants' rights.
26 Furthermore, Hall was unresponsive to Officer Lefebvre's commands and uncooperative with the

1 officers in general. Additionally, he attempted to flee and commenced using his car as a deadly
2 weapon. Thus, Officer McBride could have reasonably believed Plaintiff was going to kill or injure
3 others in his attempt to leave the scene. Therefore, Officer McBride's action in firing the shot that
4 killed Hall is protected by qualified immunity. Accordingly, Defendants Lefebvre and McBride are
5 entitled to Summary Judgment as a matter of law.

6 **C. Proximate Cause**

7 In order to establish liability for a § 1983 violation, a Plaintiff must establish that the
8 circumstance was (1) cause in fact and (2) the proximate cause of the constitutional deprivation.
9 Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996). Here, although the Plaintiff has established that
10 Lefebvre possibly violated the policy of the Las Vegas Metropolitan Police Department against
11 officers sticking their hands or other parts of their bodies inside of a suspect's vehicle, he has not
12 established that such a violation was the cause of Hall's death. The purpose of such a rule is
13 unquestionably officer safety. It had nothing to do with the events which were precipitated by Hall's
14 attempt to flee.

15 Proximate cause in this instance is not a jury question. See Springer v. Seaman, 821 F.2d
16 871, 876-77 (1st Cir.1987) (although the question of proximate causation [in a section 1983 action]
17 is sometimes for the court and the sometimes for the jury, the court decides whether reasonable
18 disagreement on the issue is tenable).

19 Traditional tort law defines intervening causes that break the chain of proximate causation.
20 *Prosser and Keeton on Torts* 44, at 312 (5th ed. 1984). This analysis applies in section 1983
21 actions. See Gutierrez-Rodriguez v. Cartagena, 882 F.2d 553, 561 (1st Cir. 1989) ("An unforeseen
22 and abnormal intervention ... breaks the chain of causality, thus shielding the defendant from [section
23 1983] liability."); Dodd v. City of Norwich, 827 F.2d 1, 6 (2d Cir. 1987)("a policy [is] a proximate
24 cause ... if [] intervening actions were within the scope of the original risk and therefore
25 foreseeable"), *cert. denied*, 484 U.S. 1007 (1988). Applying these principles to this case, we must
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1 determine whether, as a matter of law, Hall's actions in attempting to flee and using his car as a
2 deadly weapon were intervening causes which preclude liability for defendant officers.

3 To hold an individual defendant personally liable for damages under 1983, the causation
4 inquiry must be focused on whether the individual defendant was in a position to take steps to avert
5 the incident giving rise to the deprivation but failed to do so intentionally or with deliberate
6 indifference. See Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Once Hall decided to flee and
7 commenced using his car as a deadly weapon, the officers had little choice but to take immediate
8 measures to stop the threat of serious bodily injury or death to themselves and others present.
9 There is no evidence to suggest that Hall would have been shot for a traffic violation had he stayed
10 put. However, there is evidence that illegal drugs were found in his system, a fact which may explain
11 his irrational behavior.³

12 Plaintiff's argument that Lefbvre, by inserting himself into the vehicle, forced down the leg of
13 Hall and that in turn forced Hall's foot down on the accelerator, is fanciful and unsupported. It
14 ignores the fact that Hall could have moved his foot off the accelerator or used his other foot on the
15 brake, to say nothing of how an unconscious Lefebvre could have placed the car in reverse. Placing a
16 vehicle in reverse requires brake-foot and hand coordination that would be extremely difficult, if not
17 impossible, for someone hanging half in the window, even in a state of consciousness.

18 **D. Municipal Liability of Las Vegas Metropolitan Police Department**

19 Plaintiff further alleges that Las Vegas Metropolitan Police Department is liable because the
20 officers' unlawful actions were the result of a local rule, policy or custom. However, Plaintiff has
21 failed to present sufficient facts to maintain his allegation that the officers' actions were unlawful or
22 the result of an unlawful policy, rule, or custom. The action of the officer in sticking his hand or any
23 other part of his body into the Hall vehicle, even if considered a violation of police policy, was not
24 the proximate cause of Hall's death. The policy against sticking one's hand into a vehicle is for
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26 ³The toxicology report done on Hall's blood by the coroner's office found cocaine, PCP and marijuana.

1 officer safety, not to protect detainees. There are circumstances in which it is disregarded, such as
2 the removal, from a vehicle, of an uncooperative suspect or person under arrest. The undisputed
3 evidence in this case is that Hall's decision to flee and commence using his vehicle in a fashion
4 which presented the risk of serious bodily injury of death to persons in the immediate vicinity, set in
5 motion the chain of events leading to his death, not the act of the officer in sticking his hand into the
6 vehicle to demonstrate turning off the ignition.

7 Plaintiff's own expert agreed that there is nothing wrong with the training given by the
8 employer. There is no evidence of a failure to train on the part of Las Vegas Metropolitan Police
9 Department that can serve as a basis for employer liability under the undisputed facts of this case.
10 Accordingly, Defendant Las Vegas Metropolitan Police Department is entitled to Summary
11 Judgment as a matter of law on Plaintiff's claims for inadequate training.

12 **E. State Law Causes of Action**

13 Plaintiff's state law tort claims for Wrongful Death, Negligence and Negligent Supervision
14 and Training also fail for lack of evidence that any unlawful independent actions on the part of the
15 officers were the proximate cause of Hall's death. Even if the Court did not dismiss the state law
16 claims, it would decline to exercise supplemental jurisdiction. A district court has discretion to
17 decline to exercise supplemental jurisdiction over a claim if all claims over which it has original
18 jurisdiction have been dismissed. See 28 U.S.C. § 1367(c). Since the Court has dismissed all claims
19 over which it has original jurisdiction, the Court declines to exercise its supplemental jurisdiction
20 over Plaintiff's state law claims.

21 **IV. Conclusion**

22 Accordingly, **IT IS HEREBY ORDERED** that Defendants' Motion for Summary Judgment
23 (#19) is **GRANTED**;

24 **IT IS FURTHER ORDERED** that Plaintiff's Counter Motion to Withdraw as Counsel for
25 Plaintiffs Smith and Sesson (#24) is **GRANTED**;

1 **IT IS FURTHER ORDERED** that Defendants' Motion in Limine to Exclude the
2 Testimony of D.P. Van Blaricom (#35) is **DENIED as moot**;

3 **IT IS FURTHER ORDERED** that the Clerk of the Court enter **JUDGMENT** for
4 Defendants and against Plaintiffs.

5 DATED this 30th day of March 2009.

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Kent J. Dawson
United States District Judge